

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CAROL S. MARCELLIN, individually, and as
Co-Administrator of the Estate of Charles E.
Hollowell, deceased, and JESSICA
HOLLOWELL-McKAY, as Co-Administrator
of the Estate of Charles E. Hollowell,
deceased,

Plaintiffs,

v.

HP Inc., and STAPLES, INC.,

Defendants.

**Civ. No. 1:21-cv-00704-
JLS**

**DECLARATION OF BENJAMIN LEVITES IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

Pursuant to 28 U.S.C. § 1746, I, Benjamin Levites, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief:

1. I am an attorney duly admitted to practice in the State of New York and an associate in the firm of Coughlin Betke, LLP, attorneys for Defendants HP Inc. (“HP”) and Staples, Inc. herein, and as such, I am fully familiar with the facts and circumstances surrounding this case. I make this declaration in support of HP’s Motion for Summary Judgment.
2. On December 6, 2024, HP disclosed the report of expert Joseph Sala, Ph.D., whose opinions included:
 1. As sold by HP, the Computer was packaged with three manuals: (1) the Notebook PC User Guide (“User Guide”); (2) Notebook Essentials; and (3)

the HP Pavilion dv6 Entertainment PC Maintenance and Service Guide (“Maintenance Guide”). Rept. at 3.

2. These three manuals “provided extensive instructions on how to handle battery replacement, including spare part numbers for the eligible replacement batteries, how to carry out the replacement procedure, as well as additional sources for further information.” Rept. at 12.
3. HP’s warnings were “reasonable and adequate in terms of format, location, and content. These warnings are clear, unambiguous, and capitalize on formatting recommendations for safety information provided by both scientific literature and guidance documents.” Rept. at 16.
3. On December 6, 2024, HP disclosed the report of expert Donald Galler Ph.D., whose opinions included:
 1. “A label on the BMU circuit board was visible after the board was cleaned as shown in Figure 18. That label reads "20150429." This arrangement is typical of date codes and indicates a battery pack with manufacturer in 2015 and indicates that it was made five years after the computers manufactured in 2010. It could not have been the original pack nor the pack of the notebook when it was sold in Miss Marcellin.” Rept. At 15.
4. Attached hereto as Exhibit 1 as a true and correct copy of HP’s Supplemental Answers to Plaintiffs’ Second Set of Interrogatories dated February 7, 2011.
5. Attached hereto as Exhibit 2 is a true and correct copy of the excerpts of the transcript of Carol Marcellin on July 7, 2023.

6. Attached hereto as Exhibit 3 is a true and correct copy of the document production accompanying HP's Supplemental Answers to Plaintiff's Second Set of Interrogatories.
7. Attached hereto as Exhibit 4 is a true and correct copy of the Notebook PC User Guide for the HP Pavilion dv6-3200 produced by HP in this matter.
8. Attached hereto as Exhibit 5 is a true and correct copy of the Notebook Essentials for the HP Pavilion dv6-3200 produced by HP in this matter.
9. Attached hereto as Exhibit 6 is a true and correct copy of the Maintenance Guide for the HP Pavilion dv6-3200 produced by HP in this matter.
10. Attached hereto as Exhibit 7 is a true and correct copy of the report of plaintiff's expert Steve W. Martin PhD dated October 14, 2024.
11. Attached hereto as Exhibit 8 is a true and correct copy of the transcript of the second deposition of the plaintiff dated July 9, 2024.
12. Attached hereto as Exhibit 9 is a true and correct copy of the plaintiff's complaint in this matter, Dkt # 1.

DATED: Monday, May 12, 2025



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